IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1514 OF 2001

Shri Ajay Madhukar Tahkur,)
Aed Adult, residing at Room No.)
T-1-335, CIDCO Colony, Boisar,)
Taluka Palghar, District Thane.).. Petitioner.

Versus

1) The General Manager,)
Kalyan Telecom, District,)
Kala Talav, Kalyan District)
Thane.)
2) Shri K. Arunan,)
Assistant Vigilance Officer,)
Office of the General Manager)
Kalyan Telecom District,)
Kala Talav, Kalyan West,)
District Thane.)
3) The Divisional Engineer)
(Group), Palghar Taluka,)
Palghar, Dist. Thane.)
4) Dy. A.M.(c) Tarapur, Bharat)

Sanchar Nigam Limited,)
Jagdish Enclave, Near S. T.)
Stand, Boisar, Dist. Thane,)
Pin - 401 501.).... Respondents.

Mr. K. N. Kore for the Petitioner.
Mr. V.S.Masurkar for the Respondents.

CORAM : V.G. PALSHIKAR, and
V.R.KINGAONKAR, JJ.

DATED : 1ST MARCH, 2006.

JUDGMENT (Per: Kingaonkar, J.):

By this petition, the Petitioner seeks to assail order passed by the Division Engineer (Group), Palghar, whereby his private telephone connection and PCO Booth connection were disconnected.

2. The Petitioner was using the private telephone connection bearing No. 74371 and also was running business of STD PCO Booth having STD facility at telephone connection No. 70675. He was having parallel connection of STD PCO Booth at his residence

on the private telephone line. His both the telephones were disconnected by the Respondents. He made representations to the concerned authorities. His representations were turned down.

3. According to the Petitioner, the telephone facilities were disconnected without giving him opportunity of hearing. He was not served with any notice before disconnecting both the telephone facilities. He is a bonafide consumer and used to regularly pay telephone bills. He has not tampered with any telephone line. Yet the Respondents disconnected facilities without there being any fault on his part.

4. The Respondents resisted the petition mainly on the ground that malpractice was noticed and that the Petitioner used the local telephone facility for ISD calls and committed fraud. It is contended that the telephone facilities were disconnected by invoking powers available under Section 422 of the Indian Telegraph Rules. It is alleged that the Petitioner was misusing the STD PCO No. 70675 for ISD calls without metering and without detailed billing and disconnection of the telephone facilities is thus

justified.

5. We have heard learned Counsel for both the sides. The question is whether the telephone facilities were disconnected after following lawful procedure and rules.

6. Let it be noted that the telephone facilities were disconnected without giving prior notice to the Petitioner. It is not the case of the Respondents that the Petitioner was in arrears of telephone bills. The only ground canvassed by the Respondents is that the Petitioner was found misusing the local telephone connection for ISD calls also without billing and metering. The Respondents stated that the disconnection is covered by Rule 421 of the Indian Telegraph Rules and hence it is justified. This contention of the Respondents is dehoars of substance. For, under Rule 422 it is necessary to show existence of "any emergency" to the satisfaction of the Divisional Engineer. The Divisional Engineer has to arrive at such satisfaction on relevant material and has to record his satisfaction with reasons therefor. The requirements of Rule 422 have not been followed in the present case. There is nothing on record to show

that there existed an emergency for causing disconnection of the telephone lines provided to the Petitioner. There is no substantial reason as to why the regular procedure of issuing notice to the Petitioner and calling upon him to explain his stand is not followed by the Respondents. In this context learned Advocate for the Petitioner sought to rely upon **Hukum Chand Shyam Lal vs. Union of India & Ors.** (1976) 2 SCC 128. The Apex Court has observed that :

> "The scope of words "any emergency" in Rule 422 is apparently wider than the expression "public emergency" used in Section 5. It follows that the satisfaction in regard to the existence of "any emergency" under Rule 422 is to be of the Divisional Engineer. He has to arrive at such satisfaction rationally on relevant material which may include any certificate or report of the appropriate Government as to the occurrence of a 'public emergency'. The requirement of recording such satisfaction by the Divisional Engineer, with reasons therefor, is implicit in the rule. That will be a minimal safeguard against arbitrary exercise

of this drastic power."

7. In view of the legal position indicated above, it is manifest that disconnection of the telephone lines could not be effected by the Respondents by invoking powers under Rule 422 of the Indian Telegraph Rules. The impugned action is, therefore, arbitrary and liable to be set aside. The petition succeeds.

8. In the result, the Petition is allowed and the Respondents are directed to restore the telephone lines provided to the Petitioner. It is made clear, however, that grant of PCO facility is the discretion of the Respondents and as such the request of the Petitioner may be considered, if found to be proper and tenable.

9. Rule made absolute in the above terms. No order as to costs.

(V. G. PALSHIKAR, J.)

(V. R. KINGAONKAR, J.)